

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TOMAS ORTEGA and FRANCISCO ORTEGA,
Plaintiffs,

-against-

FROZEN DELI & GROCERY INC., EXCELLENT
DELI AND GROCERY CORPORATION, ABDO
ODHIB, and MARWAN MAHDI,
Defendant(s).

Case No. 1:24-cv-01231 (JLR)

MEMORANDUM OPINION
AND ORDER

JENNIFER L. ROCHON, United States District Judge:

On August 2, 2024, following the entry of a Clerk’s Certificate of Default as to Defendants Frozen Deli & Grocery Inc., Excellent Deli and Grocery Corporation, Abdo Odhib, and Marwan Mahdi (together, “Defendants”), Dkt. 26, Plaintiffs Tomas Ortega and Francisco Ortega (together, “Plaintiffs”) moved for the entry of default judgment and damages as to all Defendants. Dkt. 29. The Court subsequently referred the motion to Magistrate Judge Cave. Dkt. 34. In the Report and Recommendation (“R&R”) filed on October 22, 2024, Magistrate Judge Cave recommended that Plaintiffs’ motion be granted. Dkt. 40 (“R&R”) at 2.

Magistrate Judge Cave further recommended that Tomas Ortega be awarded compensatory damages in the amount of \$24,035.00, consisting of \$21,620.00 in overtime wages and \$2,415.00 in spread-of-hour wages; liquidated damages in the amount of \$24,035.00; Wage Theft Protection Act (“WTPA”) damages in the amount of \$10,000.00; pre-judgment interest on his compensatory damages at a rate of 9% per year from February 9, 2023 through the date of the entry of judgment; and post-judgment interest pursuant to 28 U.S.C. § 1961. Judge Cave also recommended that Francisco Ortega be awarded compensatory damages in the amount of \$3,120.00 consisting of \$3,060.00 in overtime wages

and \$60.00 in spread-of-hour wages; liquidated damages in the amount of \$3,120.00; WTPA damages in the amount of \$10,000.00; pre-judgment interest on his compensatory damages at a rate of 9% per year from May 9, 2023 through the date of entry of judgment; and post-judgment interest pursuant to the 28 U.S.C. § 1961. *Id.* at 2-3. Finally, Magistrate Judge Cave recommended that Plaintiffs together be awarded attorneys' fees in the amount of \$11,000.00 and costs in the amount of \$736.84.

In reviewing an R&R, a district court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). A district court "must determine de novo any part of the magistrate judge's disposition that has been properly objected to." Fed R. Civ. P. 72(b)(3); *accord United States v. Male Juvenile (95-CR-1074)*, 121 F.3d 34, 38 (2d Cir. 1997). To accept "uncontested portions of a report and recommendation, 'a district court need only satisfy itself that there is no clear error on the face of the record.'" *Qlay Co. v. Owen*, No. 21-cv-01784 (JLR), 2024 WL 4769718, at *1 (S.D.N.Y. Nov. 13, 2024) (quoting *Gomez v. Brown*, 655 F. Supp. 2d 332, 341 (S.D.N.Y. 2009)). "A decision is 'clearly erroneous' when the reviewing Court is left with the definite and firm conviction that a mistake has been committed." *Royal Park Invs. SA/NV v. Deutsche Bank Nat'l Tr. Co.*, No. 14-cv-04394 (AJN), 2018 WL 1750595, at *21 (S.D.N.Y. Apr. 11, 2018) (quoting *Courtney v. Colvin*, No. 13-cv-02884 (AJN), 2014 WL 129051, at *1 (S.D.N.Y. Jan. 14, 2014)); *see Qlay*, 2024 WL 4769718, at *1 (same).

Here, the R&R advised Defendants that they had fourteen days from service of the R&R to file any objections and warned that failure to timely file such objections would result in waiver of any right to raise objections to the R&R on appeal. R&R at 33. The R&R also cited 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(b), under which the parties had fourteen days from service of the R&R to file written objections. *Id.* That time

has expired, and no objections have been filed. Accordingly, the parties have waived their right to object to the R&R or obtain appellate review. *See Frank v. Johnson*, 968 F.2d 298, 300 (2d Cir. 1992) (“[F]ailure to object timely to a report waives any further judicial review of the report.”).

Pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(b), the Court has reviewed the R&R for clear error. The Court finds that the report is comprehensive, well-reasoned, and free from clear error. The Court therefore adopts Magistrate Judge Cave’s R&R in its entirety. *See Qlay*, 2024 WL 4769718, at *1; *Ramos v. CJ Contractor Servs., Inc.*, No. 23-cv-00274 (JLR), 2024 WL 3952643, at *1 (S.D.N.Y. Aug. 27, 2024).

The Clerk of Court is respectfully directed to enter final judgment in favor of Plaintiffs as follows:


1. Tomas Ortega be awarded:
 - a. compensatory damages in the amount of \$24,035.00, consisting of \$21,620.00 in overtime wages and \$2,415.00 in spread-of-hour wages;
 - b. liquidated damages in the amount of \$24,035.00;
 - c. WTPA damages in the amount of \$10,000.00;
 - d. pre-judgment interest on his compensatory damages at a rate of 9% per year from February 9, 2023 through the date of the entry of judgment;
 - e. and post-judgment interest pursuant to 28 U.S.C. § 1961; and that
2. Francisco Ortega be awarded:
 - a. compensatory damages in the amount of \$3,120.00 consisting of \$3,060.00 in overtime wages and \$60.00 in spread-of-hour wages;
 - b. liquidated damages in the amount of \$3,120.00;
 - c. WTPA damages in the amount of \$10,000.00;

- d. pre-judgment interest on his compensatory damages at a rate of 9% per year from May 9, 2023 through the date of entry of judgment;
 - e. and post-judgment interest pursuant to the 28 U.S.C. § 1961; and that
3. Plaintiffs together be awarded:
- a. Attorneys' fees in the amount of \$11,000.00; and
 - b. Costs in the amount of \$736.84.

The Clerk of Court is also requested to enter judgment in favor of Plaintiff as set forth above and close the case.

Dated: November 21, 2024
New York, New York

SO ORDERED.



JENNIFER L. ROCHON
United States District Judge